

## FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554

DISPATCHED BY  
MM Docket No. 92-202

In the Matter of

Amendment of Section 73.202(b), RM-8051  
Table of Allotments,  
FM Broadcast Stations.  
(Newberry Springs, California)

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: May 1, 1995;

Released: May 9, 1995

By the Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 7 FCC Rcd 5617 (1992), issued in response to a request filed on behalf of Hills Broadcasting ("petitioner") proposing the allotment of Channel 247A to Newberry Springs, California, as that locality's first local aural transmission service. Petitioner filed supporting comments reiterating its intention to apply for Channel 247A if it is allotted to Newberry Springs, as proposed.<sup>1</sup> Henry Broadcasting Company ("HBC"), filed late comments, accompanied by a motion to accept.<sup>2</sup> Petitioner filed comments in opposition, to which HBC responded.<sup>4</sup>

2. The *Notice* herein proposed to allot Channel 247A to Newberry Springs (population 1,500) with a site restriction 2.5 kilometers (1.6 miles) north of the community at coordinates 34-51-00 and 116-40-42. The site restriction was

proposed to avoid a short spacing to the licensed site of Station KVAR(FM) (formerly KHTX-FM), Channel 248B, Riverside, California, at coordinates 33-57-57 and 117-17-21. We note that an application has been filed to relocate the transmitter site of Station KVAR(FM), and implement other minor changes in its facilities, at coordinates 34-14-04 and 117-08-24 (File No. BPH-930125ID).<sup>5</sup> The distance between proposed Channel 247A at Newberry Springs at coordinates 34-51-00 and 116-40-42 and the application site specified by Station KVAR(FM) at Riverside, California, is 80.4 kilometers (50 miles) whereas a minimum distance separation of 113 kilometers (70 miles) is required between first adjacent Class A-B channels. As a result, the proposed allotment of Channel 247A to Newberry Springs would preclude Station KVAR(FM) from relocating its transmitter to the site specified in its pending application (File No. BPH-930125ID).

3. Pursuant to Commission policy, a proposed allotment is generally preferred over an application representing a preference for a particular site. *See Andalusia, Alabama*, 49 FR 32201, August 13, 1984. However, the Commission will attempt to eliminate conflicts between coordinates specified by applicants and those designated in rulemaking proceedings by modifying the rulemaking proposal to specify an alternate site or an alternate channel to the extent possible. *See Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments*, 7 FCC Rcd 4917 (1992); *recon. granted in part and denied in part*, 8 FCC Rcd 4743 (1993). *See also, Evans and Martinez, Georgia*, 4 FCC Rcd 7926 (1989); *Greenville, Texas*, 6 FCC Rcd 6048 (1991), and cases cited therein.

4. In this instance, in an effort to accommodate the Newberry Springs proposal, as well as the application of Station KVAR(FM) at Riverside, California, the Commission conducted an engineering analysis to determine the availability of an alternate channel to resolve the above-noted conflict. As a result, we have determined that Channel 279A is available for consideration at Newberry Springs, and can be allotted without a site restriction at coordinates 34-49-42 and 116-41-12.<sup>6</sup>

<sup>1</sup> However, petitioner did not provide supporting documentation, as requested in the *Notice*, regarding the estimated population figure (4,000 persons) attributed to Newberry Springs by the Newberry Springs Community Services District. As stated in the *Notice*, the 1992 *Rand McNally Commercial Atlas and Marketing Guide* ("Atlas") attributed Newberry Springs with a population of 900. The 1994 edition of the *Atlas* credits the community with a population of 1,500. Therefore, in the absence of evidence to the contrary, for purposes of this rule making we will utilize the population data reflected for Newberry Springs in the 1994 *Atlas*. However, petitioner should note that while it is in its best interest to present the Commission with supporting evidence, preferably at the outset of the rule making process, failure to provide such information, either initially or in response to the Commission's request for additional information could in some instances, lead to a denial of the proposal.

<sup>2</sup> At the time its comments were filed, HBC was the licensee of Station KHTX-FM, Channel 248B, Riverside, California. According to the Commission's records, an assignment of the license for Station KHTX-FM (File No. BALH-940816EB) from HBC to San Bernardino Radio, Inc. ("SBR") was granted on October 21, 1994, and consummated December 12, 1994. The call letters were subsequently changed to KVAR(FM) effective December 13, 1994. We will serve a copy of this *Report and Order* on SBR.

<sup>3</sup> We will not accept HBC's comments. Section 1.415(d) of the Commission's Rules does not authorize the filing of pleadings beyond the reply comment period unless specifically requested or authorized.

<sup>4</sup> In view of our rejection of HBC's comments (footnote 3, *supra*), additional comments in response thereto will not be considered.

<sup>5</sup> Moreover, during the pendency of this proceeding, a construction permit was issued to Station KXPT(FM), Channel 246C, Las Vegas, Nevada, at coordinates 35-58-02 and 115-30-06 (File No. BPH-940725IC), which is 1.3 kilometers (1 mile) short-spaced to proposed Channel 247A at Newberry Springs. The distance between proposed Channel 247A at Newberry Springs and the construction permit site of Station KXPT(FM) is 163.7 kilometers (101 miles) whereas a distance of 165 kilometers (102 miles) is required in this instance. We also note that the construction permit issued to Station KXPT(FM) was granted in accordance with the provisions of Section 73.215 of the Commission's Rules which allows contour protection for short-spaced assignments.

<sup>6</sup> Channel 247A at Newberry Springs would require a site restriction 2.5 kilometers (1.6 miles) north of the community, whereas Channel 279A can be allotted in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, without a site restriction. Since the

5. In view of the petitioner's stated interest in providing a first local aural transmission service to Newberry Springs, we will allot Channel 279A to that community. Additionally, as Newberry Springs is located within 320 kilometers (199 miles) of the Mexican border, the Commission obtained concurrence in the allotment of Channel 279A to that community from the Mexican government.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **June 23, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED to include Newberry Springs, California, as follows:

City	Channel No.
Newberry Springs, California	279A

7. The window period for filing applications for Channel 279A at Newberry Springs, California, will open on **June 23, 1995**, and close on **July 24, 1995**.

8. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the licensees of Station KVAR(FM) and Station KXPT(FM), as follows:

San Bernardino Radio, Inc.  
Radio Station KVAR(FM)  
1875 Century Park East  
Suite 1230  
Los Angeles, CA 90067

Lotus Broadcasting Corp.  
Radio Station KXPT(FM)  
6290 Sunset Blvd.  
Hollywood, CA 90028

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 279A at Newberry Springs, California, should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 418-2700.

## FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

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Commission endeavors to impose the least restrictive theoretical site from the intended city of license, we believe that the public interest would be better served by considering Channel 279A at Newberry Springs instead of Channel 247A. See *Vacaville and Middletown, California*, 4 FCC Rcd 8315 (1989), and cases cited therein.

<sup>7</sup> Station KXPT(FM), Las Vegas, Nevada, may also benefit from

our determination, as consideration of alternate Channel 279A at Newberry Springs will eliminate the short spacing to its construction permit as presented by proposed Channel 247A, thereby affording the licensee greater latitude in pursuing its facility change at Las Vegas. We will serve the licensee of Station KXPT(FM) with a copy of this *Report and Order*.